IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO.15251 of 2005

DATE OF DECISION: 14.05.2007.

Inderjit Singh Dhami ....Petitioner.

Versus

State of Punjab and another ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE L.N. MITTAL

PRESENT: Mr. R.K.Arora, Advocate
for the petitioner.

J.S. Khehar, J. (oral)

The petitioner has filed the instant writ petition, claiming protection of his wages as were last drawn by him while he was in the employment of the Army. On the instant issue, the petitioner had first approached this Court by filing CWP No.13878 of 2004 The aforesaid writ petition was disposed of by an order dated 28.9.2004, requiring the respondents to take a decision on the instant issue, which the petitioner had also raised through a legal notice, by passing a speaking order. In furtherance of the directions issued by this Court in CWP No.13878 of 2004, the respondents passed an order dated 7.3.2005. It is this order which is subject matter of challenge at the hands of the petitioner, on account of the fact, that the respondents did not accede to the claim of the petitioner i.e. that his pay, on entry into Government service, should be fixed at the same level as he was drawing at the end of his employment in

the Army.

It is not a matter of dispute, that the claim of the petitioner, on the issue of fixation of initial pay, has to be determined in terms of the provisions of the Punjab Civil Services Rules, Volume I, Part I, and that, rule 4.4 of the aforesaid rules relates to the issue under reference. The claim of the petitioner has been rejected after the authorities considered his claim under rule 4.4(a) of the Punjab Civil Services Rules, Volume I, Part I. It is, however, the contention of the learned counsel for the petitioner, that under the aforesaid provision the petitioner is factually entitled to the pay fixation, as has been sought by him. In order to adjudicate upon the issue raised by the learned counsel for the petitioner, it is necessary to extract hereunder rule 4.4 of the Punjab Civil Services Rules, Volume I, Part I. The same is, accordingly, extracted hereunder:-

> "4.4. The initial substantive pay of a Government employee who is appointed substantively to a post on a time-scale of pay is regulated as follows:-
>
> (a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended-
>
> (i) when appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purpose of rule 4.13) than these attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post;

(ii)when appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay plus personal pay equal to the difference; and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum of the time-scale of the new post is higher than his substantive pay in respect of the old post he will draw that minimum as initial pay;

(iii)when appointment to the new post is made on his own request under rule 3.17 (a) and maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post,he will draw that maximum as initial pay."

A perusal of the aforesaid rule reveals, that pay of the post held by a Government employee on which he holds a lien shall be protected. The aforesaid rule would have been applicable to the petitioner had the petitioner held a lien against any other post at the time of his appointment as Assistant Director, Department of Sports and Youth Services, on 30.8.1991. It is not a matter of dispute that on the aforesaid date or immediately preceding thereto, the petitioner was not in service in any other organisation and did not hold any lien against any other post. As a matter of fact, the service rendered by the petitioner in the Indian Army

came to an end on 16.7.1990. Since the petitioner did not have any lien on a permanent post at the time of his appointment as Assistant Director in the Department of Sports and Youth Services, Punjab, it is not possible for us to accept the claim of the petitioner under rule 4.4 (a) of the Punjab Civil Services Rules, Volume I, Part I.

In addition to the aforesaid contention, learned counsel for the petitioner also seeks to place reliance on the policy instructions dated 15.11.2000, which have been placed on the record of this case as Annexure P8. It is not possible for us to accept the instant contention of the learned counsel for the petitioner on account of the fact, that the aforestated policy instructions relate to the issue of pay fixation in terms of the provisions of rule 4.4 of the Punjab Civil Services Rules, Volume I, Part I, and to the extent there is a repugnancy therein, the aforesaid policy instructions expressly note that necessary amendments would be made in rule 4.4 of the Punjab Civil Services Rules, Volume I, Part I. It is, therefore, not possible for us to accept that any rights accrued to the petitioner under the provisions of the policy instructions dated 15.11.2000.

For the reasons recorded hereinabove, we find no merit in this petition and the same is, accordingly, dismissed.

(J.S. Khehar)
Judge

(L.N. Mittal)
Judge

May 14, 2007.
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